

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.
DAMIEN CARMICHAEL,
Defendant.

21-CR-75-LJV
DECISION & ORDER

On August 22, 2022, this Court sentenced the defendant, Damien Carmichael, to a term of 40 months' imprisonment. Docket Item 151. In doing so, the Court varied downward from Carmichael's Sentencing Guidelines range of 46 to 57 months. Docket Item 152.

In May 2023, the United States Sentencing Commission submitted to Congress an amendment to the Sentencing Guidelines regarding the calculation of certain defendants' Criminal History points. More specifically, the amendment reduced the offense level calculation for certain defendants by eliminating or reducing the status points assigned under U.S.S.G. §4A1.1(d), resulting in a lower Guidelines range. On August 24, 2023, the Sentencing Commission voted to apply the amendment retroactively, with an effective date of February 1, 2024. On November 1, 2023, the amendment took effect.

The next day, Carmichael moved under 18 U.S.C. § 3582(c)(2) to reduce his sentence to "time served," effective February 1, 2024. Docket Item 242. A few weeks later, the United State Probation Office filed an Abbreviated Supplemental Presentence Report ("Supplemental PSR"), computing Carmichael's Guidelines range as 37 to 46 months under the November 2023 amendment. Docket Item 248 at 1. The Supplemental

PSR stated that “[e]ffective February 1, 2024, the defendant will have served approximately two (2) years, eight (8) months and six (6) days. He has earned 108 days of good time credit thus far and is eligible for a time served sentence.” *Id.* It further explained that “[a]t present, the defendant’s projected release date (without regard to the current motion for a sentence reduction) is March 29, 2024.” *Id.* Regarding Carmichael’s time incarcerated, the Supplemental PSR reported that he “has received no disciplinary actions while incarcerated” and “has participated in education and vocational courses such as Real Estate Class, Public Speaking, Earth Science, African American History, History of World War I, and a Classroom Forklift Course.” *Id.*

On December 14, 2023, the government responded, indicating that it did not oppose the motion and requesting that the defendant receive a sentence in the new Guidelines range of 37 to 46 months. Docket Item 254 at 2. The government asked, however, that rather than reducing the defendant’s sentence to “time served,” the Court sentence him to a specific term and “allow the BOP to determine the new release date per its customary policies and procedures.” *Id.* at 6. The government noted that the defendant’s eligible release “date is subject to change should the defendant commit a prohibited act which results in a reduction of his good time credits between now and . . . February 1, 2024.” *Id.*

On December 18, 2023, Carmichael replied. Docket Item 255. He noted that he “has not had any disciplinary infractions, thereby earning all of his good time credit” and already “was released to the halfway house.” *Id.* at 2. He “is currently scheduled to commence his term of supervised release on May 9, 2024.” *Id.* He again asked the Court

to “impose a sentence of time served or, alternatively, impose a sentence of 37 months.”

Id.

The parties do not dispute that Carmichael is now eligible for a Guidelines sentence between 37 and 46 months. This Court agrees. Moreover, this Court agrees with Carmichael that—based on the sentencing factors in his case, his model behavior while incarcerated, and the government’s lack of objection to a sentence anywhere within the new range—a sentence at the low-end of that range is appropriate. And because Carmichael did not have any disciplinary infractions and already has been released to a halfway house, this Court finds that the government’s concern about his losing good time is no longer an issue.

Accordingly, this Court hereby GRANTS Carmichael’s motion, Docket Item 242, and ORDERS that his sentence be reduced to time served, effective February 1, 2024. This Court will issue an amended judgment.

SO ORDERED.

Dated: January 16, 2024
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE